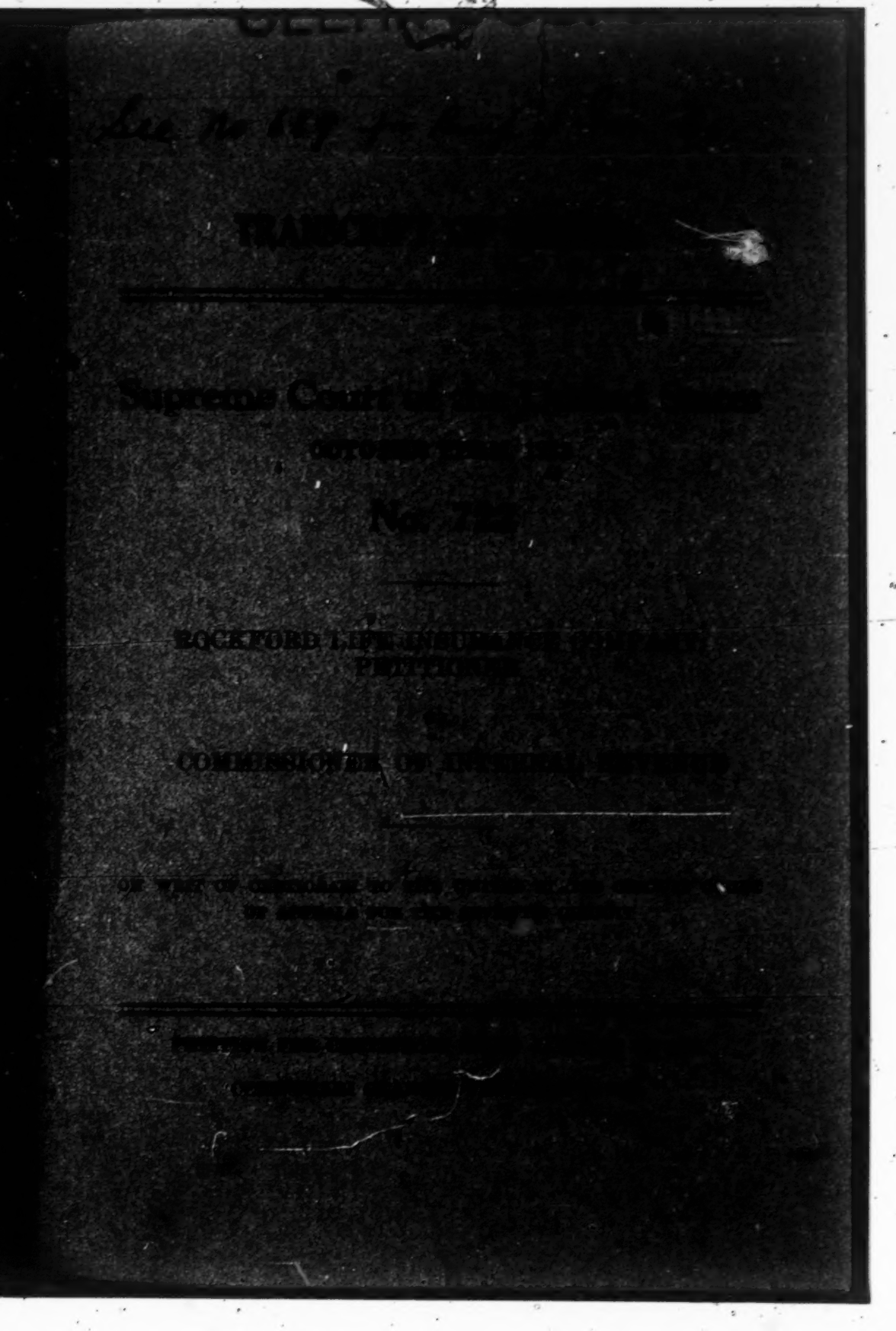

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 722

ROCKFORD LIFE INSURANCE COMPANY,
PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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BEFORE UNITED STATES BOARD OF TAX APPEALS

Docket No. 60915

ROCKFORD LIFE INSURANCE CO., Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Appearances:

For Petitioner: B. W. Flinn, C. P. A., M. L. Seidman, C. P. A.

For Respondent: Thos. F. Callahan, Esq.

DOCKET ENTRIES

1931.

Dec. 18. Petition received and filed. Taxpayer notified. (Fee paid.)

Dec. 18. Copy of petition served on General Counsel.

1932.

Feb. 5. Answer filed by General Counsel.

Feb. 12. Copy of answer served on taxpayer—assigned to General Calendar.

July 11. Hearing set Sept. 28, 1932.

Sept. 7. Notice of appearance of M. L. Seidman as counsel filed.

Sept. 17. Motion for leave to amend petition, amendment tendered, filed by taxpayer.

Sept. 28. Hearing had before C. R. Arundell—submitted on merits. Stipulation of facts filed.

Oct. 7. Agreement to correct stipulation of facts filed.

Oct. 11. Transcript of hearing Sept. 28, 1932 filed.

Oct. 12. Motion for leave to amend granted.

Oct. 21. Brief filed by taxpayer.

Nov. 9. Memorandum opinion rendered—C. R. Arundell, Division 7. Decision will be entered under Rule 50.

Dec. 17. Answer to amendments to petition filed by General Counsel. 12/22/32 copy served.

Dec. 29. Notice of settlement filed by taxpayer. 1/4/33 copy served.

1933.

Jan. 4. Hearing set Jan. 25, 1933 on settlement.

Jan. 7. Notice of settlement filed by General Counsel. 1/12/33 copy served.

[fol. 2]

Jan. 14. Consent to settlement filed by taxpayer.

Jan. 24. Decision entered—C. R. Arundell, Division 7.

Apr. 6. Petition for review by U. S. Circuit Court of Appeals, 7th Circuit, with assignments of error filed by General Counsel.

Apr. 14. Proof of service filed by General Counsel (taxpayer).

Apr. 19. Proof of service filed by General Counsel (attorney).

May 25. Præcipe with proof of service thereon filed.

BEFORE UNITED STATES BOARD OF TAX APPEALS

Docket No. 60915

ROCKFORD LIFE INSURANCE COMPANY, 327 East State Street, Rockford, Illinois, Petitioner,

versus

COMMISSIONER OF INTERNAL REVENUE, Washington, D. C., Respondent

PETITION—Filed Dec. 18, 1931

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Symbols IT:AR:D-6 LF-60D) dated October 20, 1931 and as a basis of its proceedings alleges as follows:

1. The Petitioner is an Illinois corporation with its principal office at Rockford, Illinois.

2. The notice of deficiency, a copy of which is attached and marked Exhibit "A", was mailed to the petitioner on October 20, 1931.

3. Taxes in controversy are the income taxes for the calendar year 1929 and are for $443.63.

4. The determination of tax set forth in said notice of deficiency is based upon the following errors.

(a) The Commissioner of Internal Revenue in computing the tax liability for the calendar year 1929 has erroneously [fol. 3] refused to allow as a deduction depreciation sustained on the home office building of $1,813.71.

(b) The Commissioner of Internal Revenue, in computing the tax liability for the calendar year 1929, has erroneously refused to allow as a deduction taxes paid on the home office building of $1,808.03.

(c) The Commissioner of Internal Revenue, in computing the tax liability for the calendar year 1929, has erroneously refused to allow as a deduction an expenditure for repairs to the home office building of $411.31.

5. The facts upon which the petitioner relies as a basis for its proceedings are as follows:

(a) In 1926 the petitioner acquired by purchase at a cost of $75,000.00 a home office building. Of the purchase price of $75,000.00, $41,250.00 was the value of the land and $33,750.00 the value of the building. In 1926 the petitioner expended $2,524.21 for remodeling the home office building. The total cost of the building, subject to depreciation, is $33,750.00 representing original cost plus cost of remodeling of $2,524.21, making a total cost subject to depreciation of $36,274.21. The estimated life of the home office building when acquired in 1926 was twenty years. The annual depreciation is five per cent. Upon the examination of petitioner's federal income tax return for the calendar year 1929, the respondent refused to allow the deduction for depreciation sustained on the home office building of $1,813.71.

(b) During 1929 the tax assessor of Rockford Township, Rockford, Illinois, made an assessment against the petitioner for real estate taxes on its home office building of $1,808.03, which were duly paid, and claimed as a deduction from taxable income on the original corporation income tax return filed for 1929. Upon the examination of petitioner's federal income return for the year 1929, the respondent refused to allow the deduction of real estate taxes

paid on the home office building of $1,808.03 and increased petitioner's net income by that amount.

(c) During 1929 the petitioner expended for repairs to the home office building $411.31, which did not prolong the life of the building. The building repairs of $411.31 were claimed as a deduction on the original corporation income tax return filed for 1929. Upon the examination of petitioner's income tax return for the calendar year 1929 the respondent refused to allow the expenditure for repairs to the home office building of $411.31 and increased petition-
[fol. 4] er's net income by that amount.

6. The petitioner prays for relief from the deficiency asserted by the respondent on the following and each of the following particulars:

(a) That in arriving at the tax liability of the petitioner for the calendar year 1929 the depreciation sustained on the home office building of $1,813.71 should be allowed as a deduction from taxable income.

(b) That in arriving at the tax liability of the petitioner for the calendar year 1929 the real estate taxes paid on the home office building of $1,808.03 should be allowed as a deduction from taxable income.

(c) That in arriving at the tax liability for the petitioner for the calendar year 1929 the expenditure for repairs to the home office building of $411.31 should be allowed as a deduction from taxable income.

Whereas the petitioner prays that this Board may hear and re-determine the deficiency herein alleged.

B. W. Flinn, C. P. A. B. W. Flinn, Accountant for Taxpayer, 502 Manufacturers National Bank Bldg., Rockford, Illinois.

Duly sworn to by Roy Hanson. Jurat omitted in printing.

[fol. 5] EXHIBIT "A" TO PETITION

Treasury Department, Washington

Office of Commissioner of Internal Revenue

Address reply to Commissioner of Internal Revenue and refer to Rockford Life Insurance Company, 327 East State Street, Rockford, Illinois.

Oct. 20, 1931.

SIRS: You are advised that the determination of your tax liability for the year 1929 discloses a deficiency of $607.53, as shown in the statement attached.

In accordance with section 272 of the Revenue Act of 1928, notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of your tax liability.

However, if you do not desire to petition, you are requested to execute the enclosed agreement form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this agreement will expedite the closing of your return by permitting an early assessment of any deficiency and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the enclosed agreement, or on the date assessment is made, whichever is earlier; whereas if no agreement is filed, interest will accumulate to the date of assessment of the deficiency.

Respectfully, David Burnet, Commissioner (Signed),
by J. C. Wilmer, Deputy Commissioner.

Enclosures: Statement. Form 882. Form 870. Schedules 1 to 2, inclusive. Exhibit A.

[fol. 6] Statement

IT:AR:D-6.
LF-60D.

In re: Rockford Life Insurance Company, 327 East State Street, Rockford, Illinois

Tax Liability

Year	Tax liability	Tax assessed	Deficiency
1929	$3,639.69	$3,032.16	$607.53

The change in tax from that shown by the revenue agent's report is due to adjustments made by this office as explained herein. These adjustments were also explained in Bureau letter dated July 29, 1931.

With reference to fees for drawing papers on mortgage loans, the Bureau holds that such receipts do not come

within the meaning of the provisions of section 202(a) of the Revenue Act of 1928 and should, therefore, be excluded from gross income.

Rockford Life Insurance Company, Year Ended December 31, 1929

Schedule 1

Net Income

Net income as disclosed by return		$27,565.11
As corrected		33,088.08
Net adjustment		$5,522.97
Unallowable deductions and additional income:		
(a) Investment expenses	$1,195.27	
(b) Depreciation	3,261.42	
(c) Taxes	655.37	
(d) Other expenses of home office building	411.31	
Total		5,523.37
Nontaxable income and additional deductions:		
(e) Error in computation of 4 per cent of the mean of the reserve funds		:40
Net adjustment as above		$5,522.97

[fol. 7]

Schedule 1-A

Explanation of Items Changed

(a) The following investment expenses have been allowed in lieu of one-fo-rth of one per cent of the mean of the invested assets. This action is in accordance with section 203(a)(5) of the Revenue Act of 1928.

Allocation of salaries of officers and employees to the investment department:

Officers and employees	Salary	Time devoted to department	Amount allocated
President	$7,750.00	10%	$775.00
Secretary	4,560.00	20%	912.00
Counsel	1,800.00	50%	900.00
Employee	1,800.00	100%	1,800.00
Total			$4,387.00

One-fourth of one per cent of the mean of the invested assets	5,582.27
Amount disallowed	$1,195.27

Explanation of Items Changed

(b) The Bureau holds that depreciation may only be taken on that portion of the cost of furniture and fixtures used in the investment department. In the absence of any specific allocation of such cost to the investment department, allocation has been made upon the basis of the ratio of investment income to total income computed as follows:

Income from interest and rents	$123,248.44
Income from premiums	627,899.33
Total	$751,147.77
$123,248.44 ÷ $751,147.77 × $1,783.02 (depreciation as shown in exhibit A)	292.56
Depreciation deducted on return	3,553.98
Depreciation disallowed	$3,261.42

In this connection, you are advised that the Commissioner of Internal Revenue has not acquiesced in the decision of [fol. 8] the United States Board of Tax Appeals in the case of the Independent Life Insurance Company of America published in volume 17 B. T. A., page 757. Inasmuch as the rental value of the space occupied in the home office building was not included in gross income, depreciation on such building has been disallowed. This action is held to be in accordance with section 203(b) of the Revenue Act of 1928.

(c) This amount represents the difference between the taxes on the home office building, $1,808.03, deducted on the

return but disallowed as explained in paragraph three, item (b), and $1,152.66, taxes paid for shareholders and not deducted on return, but allowable under section 203(a)(6) of the Revenue Act of 1928.

(d) Repairs to home office building have also been disallowed as explained in paragraph three, item (b).

(e) This adjustment is made to correct an error on your return as shown in the following computation:

Reserve funds at the beginning of the year	$1,983,136.93
Corrected reserve funds at the end of the year	2,232,520.00
Total	$4,215,656.93
Mean of the reserve funds	2,107,828.47
Four per cent of the mean of the reserve funds	84,313.14
Amount claimed on return	84,312.74
Additional amount allowed	.40

Schedule 2

Computation of Tax

Net income for taxable year	$33,088.08
Income tax at 11%	3,639.69
Total previously assessed	3,032.16
Additional tax to be assessed	$607.53

[fol. 9]

EXHIBIT A

IT:AR:D-6. LF.

Rockford Life Insurance Company, Rockford, Illinois.

Furniture and Fixtures

Depreciation Schedule

Year and month		Corrected balance close of period	Additions or (reductions)	Rate	Total to December 31, 1926	1927	1928	1929
1916	Balance	$2,778.66		(A) 10%	$2,778.66	.....	.....	.....
1917	July 1	3,223.17	444.51	(B)	422.27	22.24	.....	.....
1918	July 1	3,449.71	226.54	(C)	192.52	22.65	$11.37	.....
1919	July 1	2,745.91	(703.80)	(D)	(527.85)	(70.38)	(70.38)	($35.19)
1920	July 1	3,018.46	272.55		177.17	27.26	27.26	27.26
1921	July 1	3,695.32	676.86		372.28	67.69	67.69	67.69
1922	July 1	5,084.05	1,388.73		624.92	138.87	138.87	138.87
1923	July 1	6,437.39	1,353.34		437.66	135.33	135.33	135.33
1924	July 1	9,378.92	2,941.53		735.38	294.15	294.15	294.15
1925	July 1	10,507.13	1,128.21		169.23	112.82	112.82	112.82
1926	July 1		5,405.93		270.30	540.59	540.59	540.59
1926		13,134.40	(2,778.66)	(A) 100% Dep.	.....	.....	.....	.....
1927	July 1		2,949.29		.....	147.47	294.93	294.93
1927		15,639.18	(444.51)	(B) 100% Dep.	.....	.....	.....	.....
1928	July 1		1,408.44		.....	.....	70.42	140.84
1928		16,821.08	(226.54)	(C) 100% Dep.	.....	.....	.....	.....
1929	July 1		1,314.50		.....	.....	.....	65.73
1929		18,839.38	703.80	(D) 100% Dep.	.....	.....	.....	.....
Total Depreciation					$5,688.54	$1,438.69	$1,623.15	$1,783.02

[fol. 10] BEFORE UNITED STATES BOARD OF TAX APPEALS

[Title omitted]

ANSWER—Filed Feb. 5, 1932

Now comes the Commissioner of Internal Revenue, the respondent herein, by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, and for answer to the petition heretofore filed in this appeal, admits and denies as follows:

1 and 2. Admits the allegations contained in paragraphs 1 and 2 of the petition.

3. Admits that the taxes in controversy are the income taxes for the calendar year 1929. Denies the remaining allegations contained in paragraph 3 of the petition.

4 (a) (b) and (c). Denies that the respondent committed the errors alleged in subparagraphs (a) (b) and (c) of paragraph 4 of the petition.

5 (a). Admits that the respondent has not allowed as a deduction for the calendar year 1929 alleged depreciation on the home office building in the amount of $1,815.71. Denies the remaining allegations contained in subparagraph (a) of paragraph 5 of the petition.

5 (b). Admits that the respondent has not allowed as a deduction from gross income for the year 1929 the amount of $1,808.03, alleged taxes paid on the home office building. Denies the remaining allegations contained in subparagraph (b) of paragraph 5 of the petition.

5 (c). Admits that the respondent has not allowed as a deduction from gross income for 1929 the amount of $411.31, alleged expenditure for repairs to the home office building. Denies the remaining allegations contained in subparagraph (c) of paragraph 5 of the petition.

Denies generally and specifically each and every allega-
[fol. 11] tion contained in the petition not hereinbefore expressly admitted, qualified or denied.

Wherefore, it is prayed that the Board redetermine the amount of the deficiency involved in this proceeding to be equal to the amount determined by the Commissioner, plus

any additional amount which may arise from the correction of any error or errors that may have been committed by the Commissioner. Claim is hereby asserted for the increased deficiency, if any, resulting from such redetermination.

(Signed) C. M. Charest, General Counsel, Bureau of Internal Revenue. Of Counsel: L. W. Creason, Special Attorney, Bureau of Internal Revenue.

BEFORE UNITED STATES BOARD OF TAX APPEALS

[Title omitted]

AMENDMENTS TO PETITION—Filed Sept. 27, 1932

Now comes the petitioner, by its counsel, M. L. Seidman, and moves that the petition in this cause be amended in the following respects:

1. That paragraph "4" be amended to include sub-paragraph "(d)", reading as follows:

"(d) The Commissioner of Internal Revenue erroneously failed to allow the full amount of depreciation which petitioner sustained in 1929 in connection with its furniture and fixtures, allowing only the sum of $292.56 applicable to petitioner's investment income, and denying as a deduction the sum of $1,490.46 applicable to petitioner's life insurance business."

2. That paragraph "5" be amended to include sub-paragraph "(d)", reading as follows:

[fol. 12] "(d) Petitioner's furniture and fixtures employed in its business in 1929 were acquired at a cost of $18,839.38, as determined by the Commissioner of Internal Revenue in Exhibit "A" attached to the deficiency notice; and a reasonable allowance for depreciation on said furniture and fixtures for the year 1929 was $1,783.02, as determined by the Commissioner of Internal Revenue in the deficiency notice. The Commissioner of Internal Revenue allowed as a deduction in computing petitioner's 1929 net income only $292.56 of said depreciation, erroneously disallowing the balance of $1,490.46 on the ground that peti-

tioner was not entitled to deduct depreciation on furniture and fixtures applicable to its life insurance business."

3. That paragraph "6" be amended to include sub-paragraph "(d)", reading as follows:

"(d) In arriving at petitioner's net income and tax liability for the calendar year 1929, the deduction for depreciation on furniture and fixtures be increased from $292.56 to $1,783.02."

Dated September 16, 1932.

M. L. Seidman, M. L. Seidman, C. P. A., Counsel for Petitioner (Post Office Address:) 2 Lafayette Street, New York City.

Duly sworn to by Roy Hanson. Jurat omitted in printing.

[fol. 13] BEFORE U. S. BOARD OF TAX APPEALS

ANSWER TO AMENDMENTS TO PETITION—Filed Dec. 17, 1932

Now comes the Commissioner of Internal Revenue, by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, and for answer to the amendments to the petition filed herein, denies as follows:

1. Denies each and every allegation contained in paragraph 1 of the Amendments to Petition.

2. Denies each and every allegation contained in paragraph 2 of the Amendments to Petition.

3. Denies each and every allegation contained in paragraph 3 of the Amendments to Petition.

Wherefore, it is prayed that the appeal be denied and the tax as shown in the deficiency notice be in all respects approved.

(Signed) C. M. Charest, General Counsel, Bureau of Internal Revenue. Of counsel: Thos. F. Callahan, Special Attorney, Bureau of Internal Revenue.

BEFORE U. S. BOARD OF TAX APPEALS

STIPULATION OF FACTS—Filed at Hearing Sep. 28, 1932. Admitted in Evidence Sep. 28, 1932

It is hereby stipulated and agreed by and between the parties to the above-entitled appeal, by their respective counsel, that the Board may find the following facts:

1. That the petitioner, Rockford Life Insurance Company, is a life insurance company incorporated under the laws of the State of Illinois, with its principal office located at Rockford, Illinois.

[fol. 14] 2. That throughout the year 1929 petitioner owned the land and building located at 327 East State Street, Rockford, Illinois, which it acquired in 1926 at a total cost of $77,524.21, made up as follows:

Land	$41,250.00
Building	33,750.00
Permanent improvements to building	2,524.21
Total	$77,524.21

A reasonable allowance for exhaustion, wear and tear of this building, and the improvements thereto, sustained by the petitioner during the year 1929, is $1,813.71.

3. That the book value as of December 31, 1929, of the land and building located at 327 East State Street, Rockford, Illinois, which the petitioner owns, was $71,176.23.

4. In 1929, petitioner paid annual real estate taxes covering premises 327 East State Street, Rockford, Illinois, to the tax assessor of Rockford Township, Rockford, Illinois, for the year 1929, in the sum of $1,808.03.

5. In 1929, petitioner incurred and paid expenses for ordinary and necessary repairs to the premises 327 East State Street, Rockford, Illinois, in the sum of $411.31.

6. The entire building was occupied by the petitioner, which included no rent income from the premises on its 1929 Federal income tax return other than the sum of $15.00.

7. The petitioner, in its income tax return for 1929, did not include in its gross income the rental value of any real estate owned and occupied by it in whole or in part.

8. Respondent determined that a reasonable allowance for depreciation of petitioner's furniture and fixtures for the year 1929 was $1,783.02 (see Exhibit "A" attached to deficiency notice, which in turn is Exhibit "A" attached to the petition) but allowed only $292.56 of this amount in computing petitioner's net income for 1929, holding that the balance of depreciation on furniture and fixtures applied to petitioner's insurance business and was therefore not deductible.

9. The respondent, in computing the net income upon which the deficiency notice of October 20, 1931, is based, has not allowed any deduction on account of depreciation, taxes, and repairs referred to in items 2, 3 and 4 above.

It is further stipulated and agreed that the case shall [fol. 15] stand submitted and counsel for the parties shall have thirty days for the submission of briefs.

M. L. Seidman, Counsel for Petitioner. C. M. Charest, General Counsel, Bureau of Internal Revenue, Counsel for Respondent.

BEFORE U. S. BOARD OF TAX APPEALS

AGREEMENT AS TO STIPULATION OF FACTS—Filed Oct. 7, 1932

The parties to this proceeding hereby agree that paragraph 9 of the Stipulation of Facts filed with the Board on September 28, 1932, reading as follows:

The respondent, in computing the net income upon which the deficiency notice of October 20, 1931, is based, has not allowed any deduction on account of depreciation, taxes, and repairs referred to in items 2, 3, and 4 above.

shall be stricken, and in lieu thereof the following paragraph shall be substituted:

The respondent, in computing the net income upon which the deficiency notice of October 20, 1931, is based, has not

allowed any deduction on account of depreciation, taxes, and repairs referred to in items 2, 4, and 5 above.

(Signed) M. L. Seidman, Counsel for Petitioner.
C. M. Charest, General Counsel, Bureau of Internal Revenue, Counsel for Respondent.

vgk 9/28/32.

[fol. 16] BEFORE U. S. BOARD OF TAX APPEALS

M. L. Seidman, C. P. A., for petitioner.
Thomas F. Callahan, Esq., for the respondent.

MEMORANDUM OPINION—Filed Nov. 9, 1932

ARUNDELL:

The petitioner is an Illinois corporation engaged in the life insurance business. In its income tax return for 1929 the petitioner did not include in gross income any sum for rental value of the building owned and occupied by it, but claimed as deductions certain sums for depreciation, taxes and repairs on account of the property and depreciation on furniture and fixtures. The respondent disallowed the former because the rental value of the space occupied in the building was not included in gross income and allowed only $292.56 of the amount deducted for depreciation on furniture and fixtures, holding that the remainder applied to petitioner's insurance business, and was, therefore, not deductible. The respondent determined a deficiency of $607.53 in income tax partly as the result of these adjustments. Whether his action was proper is the only question presented for decision.

The several amounts deductible from gross income, in case we hold in favor of the petitioner, are embodied in a stipulation of facts, which we adopt as our findings of fact.

Counsel for the respondent concedes that the cases of Independent Life Insurance Co., 17 B. T. A. 757 and Lafayette Life Insurance Co., 26 B. T. A. —, are contrary to his manner of treating the items. Those cases, as well as Reserve Loan Life Insurance Co., 18 B. T. A. 359 and Two-Republics Life Insurance Co., 21 B. T. A. 1355, in which like conclusions were reached, control the decision here. Accordingly, we hold that the several amounts set forth in

the stipulation of facts representing reasonable depreciation on the building and furniture and fixtures, and taxes paid on and repairs made to the building, are deductible from gross income.

Decision will be entered under Rule 50.

Entered Nov. 9, 1932.

[fol. 17] BEFORE U. S. BOARD OF TAX APPEALS

DECISION

Pursuant to memorandum opinion entered November 9, 1932, the respondent herein, on January 7, 1933 having filed a proposed redetermination for the year 1929, and the petitioner on January 14, 1933, having filed notice of acquiescence to the said proposed redetermination, it is

Ordered and Decided that there is an overpayment for the year 1929 in the amount of $750.05.

Enter: Entered Jan. 24, 1933.

(Signed) C. Rogers Arundell, Member. (Seal.)

vlh.

BEFORE U. S. BOARD OF TAX APPEALS

NOTICE OF FILING PETITION FOR REVIEW—Filed April 14, 1933

To Rockford Life Insurance Company, 327 East State Street, Rockford, Illinois:

You are hereby notified that the Commissioner of Internal Revenue did, on the 6th day of April, 1933, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Seventh Circuit, of the decision of the Board heretofore rendered in the above entitled case. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 6th day of April, 1933.

(Signed) C. M. Charest, General Counsel, Bureau of Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assign- [fol. 18] ments of errors mentioned therein, is hereby acknowledged this 8 day of April, 1933.

Rockford Life Insurance Company, (Sgd.) By Francis W. Brattle, Pres. Respondent on review.

BEFORE U. S. BOARD OF TAX APPEALS

NOTICE OF FILING PETITION FOR REVIEW—Filed April 19, 1933

To M. L. Seidman, C. P. A., 2 Lafayette Street, New York, New York:

You are hereby notified that the Commissioner of Internal Review did, on the 6th day of April, 1933, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Seventh Circuit, of the decision of the Board heretofore rendered in the above entitled case. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 6th day of April, 1933.

(Signed) C. M. Charest, General Counsel, Bureau of Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of errors mentioned therein, is hereby acknowledged this 11 day of April, 1933.

(Sgd.) M. L. Seidman, Attorney for Respondent on Review.

11d. 4/5/33.

[fol. 19] IN UNITED STATES CIRCUIT COURT OF APPEALS, SEVENTH CIRCUIT

PETITION FOR REVIEW—Filed April 6, 1933

To the Honorable Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

Now comes David Burnet, Commissioner of Internal Revenue, by his attorneys, Sewall Key, Head of the Tax

Division of the Department of Justice, C. M. Charest, General Counsel, Bureau of Internal Revenue, and John D. Foley, Special Attorney, Bureau of Internal Revenue, and respectfully shows:

I

The petitioner is the duly authorized and acting Commissioner of Internal Revenue of the United States.

The respondent is a corporation organized and existing under the laws of the State of Illinois, with its principal office at Rockford, Illinois. Its income tax return for the calendar year 1929 was filed with the Collector of Internal Revenue for the 1st Collection District of Illinois, in the City of Chicago, State of Illinois, and within the territorial limits of the Seventh Judicial Circuit of the United States.

II

Prior to October 30, 1931, the petitioner determined that there was a deficiency in income tax of respondent for the calendar year 1929 in the sum of $607.53 and on said date petitioner advised respondent by registered mail of said deficiency. Respondent duly filed an appeal with the United States Board of Tax Appeals, hereinafter called the Board. The petitioner duly filed his answer to respondent's appeal and on September 28, 1932, the appeal was duly heard by the Board. On November 9, 1932, the Board entered its interlocutory decision wherein it found and adjudged that respondent was under no necessity to include in its gross income the rental value of space occupied by it in real estate owned by it as a condition to being allowed deductions for depreciation, taxes and expenses of the property so owned and occupied. The Board further held that respondent was entitled to deduct from its gross income the depreciation upon furniture and fixtures used in the underwriting [fol. 20] portion of its business as well as the depreciation of furniture and fixtures used in the investment portion of its business. Pursuant to the principles laid down in its interlocutory decision of November 9, 1932, the Board on January 24, 1933, entered its decision or order of redetermination wherein it redetermined and decided that there had been an overpayment of respondent's income taxes for the calendar year 1929 in the amount of $750.05.

III

The petitioner is aggrieved at the decision of the Board of Tax Appeals and says that in the proceedings before the Board and in the decision aforesaid, manifest error occurred and intervened to his prejudice and he assigns the following errors:

1. The Board erred in holding section 203(b) of the Revenue Act of 1928 unconstitutional.

2. The Board erred in failing to hold that the respondent was estopped to question the constitutionality of section 203(b) of the Revenue Act of 1928, by reason of having deducted taxes, expenses and allowances for depreciation in respect of its home office building when making its return for the calendar year 1929.

3. The Board erred in holding that the statutory requirement for the inclusion in gross income of the rental value of space occupied by respondent in its home office building was an attempt by Congress to treat such rental value as taxable income rather than as a mere limitation upon the amounts deductible on account of taxes, expenses and depreciation of said building.

4. The Board erred in failing to hold that section 203(b) of the Revenue Act of 1928 is sustainable as an excise tax laid upon the business of leasing property, collecting rents and managing an office building.

5. The Board erred in holding that respondent, a life insurance company, was entitled to deduct from its gross income depreciation sustained upon furniture and fixtures used in the underwriting portion of its business as well as the depreciation sustained upon furniture and fixtures used in the investment portion of its business.

Wherefore petitioner petitions that the decision of the Board be reviewed by the United States Circuit Court of Appeals for the Seventh Circuit, that a transcript of the [fol. 21] record be prepared in accordance with law and with the rules of said Court and transmitted to the clerk of said Court for filing, and that appropriate action be taken

to the end that the errors complained of may be reviewed and corrected by said Court.

(Sgd.) Sewall Key, Head, Tax Division. C. M. Charest, General Counsel, Bureau of Internal Revenue. Of Counsel: John D. Foley, Special Attorney, Bureau of Internal Revenue.

14d. 4/4/33.

Duly sworn to by C. M. Charest. Jurat omitted in printing.

[fol. 22] BEFORE U. S. BOARD OF TAX APPEALS

ORDER ENLARGING TIME—Entered June 6, 1933

For cause appearing of record, it is

Ordered: That the time for transmission and delivery of the record sur petition for review of the above entitled proceeding by the United States Circuit Court of Appeals, Seventh Circuit, be and it is hereby extended to July 15, 1933.

(Signed) Logan Morris, Member.

Dated Washington, D. C., June 6, 1933.

BEFORE U. S. BOARD OF TAX APPEALS

PRÆCIPE FOR RECORD—Filed May 25, 1933

To the Clerk of the United States Board of Tax Appeals:

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, copies duly certified as correct of the following documents and records in the above-entitled cause in connection with the petition for review by the said Circuit Court of Appeals for the Seventh Circuit, heretofore filed by the Commissioner of Internal Revenue:

1. Docket entries of the proceedings before the Board.
2. Pleadings before the Board.

(a) Petition, including annexed copy of deficiency letter.
(b) Answer.

3. Opinion and decision of the Board, including stipulation of facts filed September 28, 1932, and agreement amending stipulation of facts filed October 7, 1932, which said stipulation of facts, as amended, has been adopted by the Board as its findings of fact.

4. Petition for review, together with proof of service of notice of filing petition for review and of service of a copy of petition for review.

5. Orders if any enlarging time for the transmission and delivery of the record.

6. This præcipe.

(Signed) C. M. Charest, General Counsel, Bureau of Internal Revenue.

[fols. 23-26] Service of a copy of the within præcipe is hereby admitted this 16 day of May, 1933.

(Sgd.) J: S. Seidman, Attorney for Respondent.

11d. 4/24/33.

Clerk's certificates to foregoing transcript omitted in printing.

[fols. 27 & 28] [Caption omitted]

Appearances of counsel omitted in printing.

[fol. 29] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 5020

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

vs.

ROCKFORD LIFE INS. CO., Respondent

MOTION FOR SUBSTITUTION—Filed July 25, 1933

Comes now Guy T. Helvering, Commissioner of Internal Revenue, and moves the court that he be substituted for

David Burnet as petitioner herein, and in support of said motion respectfully shows:

1. That the resignation of said David Burnet, who was Commissioner of Internal Revenue when the petition for review in this proceeding was filed, was duly accepted and he ceased to be such officer on May 15, 1933.

2. That Guy T. Helvering was duly appointed and confirmed as Commissioner of Internal Revenue to succeed the said David Burnet; that he qualified as such officer and entered upon the duties of said office on June 6, 1933, since which date the said Guy T. Helvering has been and now is Commissioner of Internal Revenue.

3. That there is a substantial need for continuing and maintaining this proceeding and obtaining an adjudication of the questions involved, for otherwise the order of the United States Board of Tax Appeals herein sought to be reviewed will become final and the right to have the legality thereof determined will be extinguished.

This motion is made pursuant to the provisions of Section 11 of the Act of February 13, 1925, c. 229, 403 Stat. 941 (U. S. C., Title 28, Sec. 780).

Dated June 7, 1933.

Sewall Key, Special Assistant to the Attorney General, Attorney for Guy T. Helvering, Commissioner of Internal Revenue.

[fol. 30] The undersigned attorney for respondent herein hereby expressly consents to the substitution sought by the above motion.

J. H. Erdman, Attorney for Respondent.

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER SUBSTITUTING PARTY PETITIONER—July 25, 1933

On motion of Guy T. Helvering, Commissioner of Internal Revenue, expressly consented to by the respondent, it

is hereby ordered that the said Guy T. Helvering as such officer, be, and he hereby is substituted for David Burnet, former Commissioner of Internal Revenue, and that this proceeding be so continued and maintained.

[fol. 31] Appearances of counsel omitted in printing.

[fol. 32] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER SETTING CAUSE—Aug. 31, 1933

It is ordered by the Court that this cause be, and the same is hereby set down for hearing on October 12, 1933.

[fol. 33] Minute entry of submission, Oct. 12, 1933, omitted in printing.

[fol. 34] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, OCTOBER TERM, 1933, OCTOBER SESSION, 1933

No. 5020

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

vs.

ROCKFORD LIFE INSURANCE COMPANY, Respondent

Petition for Review of Decision of the United States Board of Tax Appeals

OPINION—Filed October 20, 1933

Before Alschuler, Evans, and FitzHenry, Circuit Judges

EVANS, Circuit Judge:

The two issues presented for determination by this appeal are identical with two presented in appeals Nos. 4993 and 4999, involving the Commissioner of Internal Revenue

and the Lafayette Life Insurance Company. The issues are: (1) The constitutionality of Section 203 (b) of the Revenue Act of 1928 requiring the reporting of rental value, calculated according to statute, of home office space occupied by taxpayer, if it seeks certain statutory deductions; (2) The deductibility of depreciation upon furniture and fixtures used in the underwriting department of the company.

The parties stipulated that the case be submitted on briefs without oral argument. In view of the similarity of issues in this cause and in appeals Nos. 4993 and 4999, Commissioner of Internal Revenue v. Lafayette Life Insurance Company, decided this day, the decision in these latter cases shall govern the disposition of this appeal.

It is therefore ordered that the order of the Board be, and it is hereby, reversed with directions to redetermine the tax of the respondent herein in accordance with the views expressed in the opinion in Nos. 4993 and 4999.

[fols. 35 & 36] IN UNITED STATES CIRCUIT COURT OF APPEALS

5020

COMMISSIONER OF INTERNAL REVENUE

vs.

ROCKFORD LIFE INSURANCE COMPANY

Petition for Review of Decision of the United States Board of Tax Appeals

JUDGMENT—Oct. 20, 1933

This cause came on to be heard on the transcript of the record from the United States Board of Tax Appeals, and was argued by counsel.

On consideration whereof: It is now here ordered and adjudged by this Court that the decision entered in this cause on January 24, 1933 by the United States Board of Tax Appeals be, and the same is hereby reversed; and that this cause be, and the same is hereby remanded to the said United States Board of Tax Appeals with directions to re-

determine the tax of the respondent herein in accordance with the views expressed in the opinion of this Court in Causes No. 4993, Commissioner of Internal Revenue vs. Lafayette Life Insurance Company, and No. 4999, Lafayette Life Insurance Company vs. Commissioner of Internal Revenue.

[fol. 37] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 38] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed February 5, 1934.

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted, and the case is assigned for argument immediately following No. 689, Helvering, Commissioner of Internal Revenue, vs. Independent Life Insurance Co.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 38,325. U. S. Circuit Court of Appeals, Seventh Circuit. Term No. 722. Rockford Life Insurance Company, Petitioner, vs. Commissioner of Internal Revenue. Petition for a writ of certiorari and exhibit thereto. Filed January 17, 1934. File No. 722, O. T., 1933.